

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE ENROLLED ACT No. 99

AN ACT to amend the Indiana code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.1-3-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. Gross income received by:

- (1) a conservancy district established under IC 14-33-20 or under IC 13-3-4 (before its repeal);
- (2) a regional water, sewage, or solid waste district established under IC 13-26 or IC 13-3-2 (before its repeal);
- (3) a nonprofit corporation formed solely for the purpose of supplying water to the public;
- (4) a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); ~~or~~
- (5) a nonprofit corporation formed for the purpose of providing a combination of:
 - (A) water; and
 - (B) sewer and sewage service;to the public; **or**
- (6) a county onsite waste management district established under IC 36-11;**

is exempt from the gross income tax.

SECTION 2. IC 36-11 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,

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ARTICLE 11. COUNTY ONSITE WASTE MANAGEMENT DISTRICTS

Chapter 1. Definitions and Applicability

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "District" means a county onsite waste management district established under this article.

Sec. 3. "Governing body" means the county executive of the county in which the district is located or proposed to be located.

Sec. 4. "System" means a sewage disposal system (as defined in IC 13-11-2-201).

Chapter 2. Purposes of Districts

Sec. 1. A district may be established under this article to perform one (1) or more of the following functions related to onsite waste management:

- (1) Inventory of systems.
- (2) Inspection of systems.
- (3) Monitoring the:
 - (A) performance; and
 - (B) maintenance;
 of systems.
- (4) Establishing:
 - (A) standards for installation and inspection of systems that are no less stringent than standards established by the state department of health; and
 - (B) procedures for enforcement of the standards.
- (5) Seeking grants for:
 - (A) system maintenance; and
 - (B) any other activities described in this article.
- (6) Establishing rates and charges for the operation of the district.
- (7) Establishing policies and procedures for the use of grants and other revenue of the district for installation, maintenance, and other activities of the district relating to systems in the district.
- (8) Seeking solutions for disposal of septage from systems.
- (9) Education and training of system service providers and system owners.
- (10) Coordination of activities of the district with activities of:
 - (A) local health departments;
 - (B) the department of environmental management;

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(C) the department of natural resources; and

(D) the state department of health.

(11) Other functions as determined by the governing body of the district.

Enforcement of standards by a district under subdivision (4) does not affect the authority of the department of environmental management, the state department of health, or a local health department.

Chapter 3. Establishment or Dissolution of Districts

Sec. 1. (a) The establishment of a district may be initiated only by the governing body.

(b) The dissolution of a district may be initiated only by the governing body.

(c) A notice of intent to establish or dissolve a district must be filed in:

(1) the office of the executive of each governmental entity having territory within the proposed district or the district proposed for dissolution;

(2) the department of environmental management; and

(3) the state department of health.

Sec. 2. A notice of intent to establish a district under this chapter must state the following:

(1) The proposed name of the district.

(2) The place in which the district's principal office is to be located.

(3) The following information:

(A) The need for the proposed district.

(B) The purpose to be accomplished.

(C) How the district will be conducive to the public health, safety, convenience, or welfare.

(4) An accurate description of the territory to be included in the district, which does not have to be given by metes and bounds or by legal subdivisions.

(5) The plan for financing the cost of the operations of the district until the district is in receipt of revenue from its operations.

(6) Estimates of the following:

(A) The costs of accomplishing the purpose of the district.

(B) The sources of the funding of those costs.

(C) The rates and charges that will be required.

Sec. 3. A notice of intent to dissolve a district under this chapter must state the reasons why the district is not needed.

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Sec. 4. The district may include area that is not contiguous, but the territory must be so situated that the public health, safety, convenience, or welfare will be promoted by the establishment of the area described as a single district.

Sec. 5. (a) Except as provided in subsection (b), the description of the area to be included in a district may not include a municipality.

(b) The description of the area to be included in a district may include area located within a municipality if the municipal legislative body has adopted an ordinance or resolution designating that area to be included in the district.

(c) The governing body shall:

- (1)** identify any area located within a municipality in the county that the governing body believes should be part of the area of the district; and
- (2)** request that the municipality adopt an ordinance or resolution under subsection (b) to include the area identified under subdivision (1) in the district.

(d) A municipal legislative body that has previously adopted an ordinance or resolution under subsection (b) may adopt an ordinance or resolution to exclude from the district all or part of the area previously designated for inclusion in the district.

Sec. 6. Upon the filing of a notice of intent to establish or dissolve a district under this chapter, the governing body shall appoint a hearing officer to preside over public hearings concerning the establishment or dissolution of a district. The hearing officer does not have to be a state or county employee and may not be a member of the county legislative body. If the hearing officer is not a full-time state or county employee, the hearing officer is entitled to be paid reasonable:

- (1)** expenses; and
- (2)** per diem;

for each day or part of a day in actual attendance at a meeting or hearing or in performance of duties.

Sec. 7. (a) The hearing officer shall fix a date, time, and place inside or within ten (10) miles of the proposed district for the hearing on any matter for which a hearing is authorized under this chapter.

(b) The hearing officer shall provide notice of the hearing:

- (1)** under IC 5-3-1; and
- (2)** by certified mail, return receipt requested, mailed at least two (2) weeks before the hearing to:

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- (A) the department of environmental management; and
- (B) the state department of health.

Sec. 8. A person that resides in or partially resides in an area affected by the proposed establishment or dissolution of a district:

- (1) may, on or before the date set for the hearing, file a written objection to the proposed establishment or dissolution of the district; and
- (2) may be heard at the hearing.

Sec. 9. (a) After the hearing on the proposed establishment or dissolution of the district, which may be adjourned periodically, the hearing officer shall make findings and recommendations as to whether:

- (1) the establishment of the district should be:
 - (A) approved;
 - (B) approved with modifications; or
 - (C) denied; or
- (2) the dissolution of the district should be:
 - (A) approved; or
 - (B) denied.

(b) The hearing officer shall consider, at a minimum, the following in making findings and recommendations concerning the establishment of a proposed district:

- (1) Whether the proposed district complies with the conditions of this chapter for establishment of a district.
- (2) Whether the proposed district appears capable of accomplishing its purpose or purposes in an economically feasible manner.

(c) The hearing officer shall consider, at a minimum, whether the district is needed in making findings and recommendations concerning the proposed dissolution of a district.

Sec. 10. Following a hearing under this chapter, if the governing body determines that the findings of the hearing officer show that:

- (1) the proposed district appears capable of accomplishing the purpose or purposes of the district in an economically feasible manner, a district may be established; or
- (2) there is no need for the district, the district may be dissolved;

by adoption of an ordinance by the governing body. The governing body shall give notice by mail of the adoption of an ordinance to establish a district to each person who filed a written objection under section 8 of this chapter.

Sec. 11. The district shall provide notice of the adoption of an

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ordinance under section 10 of this chapter to:

- (1) local health departments;
- (2) the department of environmental management;
- (3) the department of natural resources; and
- (4) the state department of health.

Sec. 12. A district established under this chapter is not an independent municipal corporation.

Sec. 13. An ordinance adopted under section 10 of this chapter to establish a district must state the following:

- (1) The name of the district.
- (2) The need for the district.
- (3) The purpose to be accomplished by the district.
- (4) An accurate description of the territory included in the district, which does not have to be given by metes and bounds or by legal subdivisions.
- (5) Estimates of the costs of the operations of the district.
- (6) The plan for financing the cost of the operations of the district by the county or counties in which the district is located.

Sec. 14. (a) If the governing body adopts an ordinance under section 10 of this chapter to establish a district, a person who filed a written objection under section 8 of this chapter against the establishment of the district may file an objecting petition in the office of the county auditor. The petition must be filed not more than thirty (30) days after the date the notice of the adoption of the ordinance is mailed to the person under section 8 of this chapter. The petition must state the person's objections and the reasons why the person believes the establishment of the district is unnecessary or unwise.

(b) The county auditor shall immediately certify a copy of the petition, together with other data necessary to present the questions involved, to the county legislative body. Upon receipt of the certified petition and other data, the county legislative body shall fix a time and place for the hearing of the matter. The hearing shall be held not less than five (5) days and not more than thirty (30) days after the receipt of the certified documents.

(c) The hearing shall be held in the county where the petition arose.

(d) The county legislative body shall give notice of the hearing to the petitioner and the governing body by mail at least five (5) days before the date of the hearing. After the hearing, the county legislative body shall approve or deny the establishment of the

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district. The decision by the county legislative body:

- (1) is final with respect to the establishment of the district against which the objecting petition was filed; and**
- (2) does not limit the authority of the governing body to initiate new proceedings to establish a district.**

Chapter 4. Governing Body of a District

Sec. 1. The governing body of a district may take action by adoption of an ordinance.

Chapter 5. Powers and Duties of Districts

Sec. 1. Upon establishment of the district, the district may exercise all the rights, powers, and duties conferred upon the district by this article.

Sec. 2. A district may do the following:

- (1) Make contracts for the services necessary for the operations of the district, including management of the district by any public or private entity.**
- (2) Adopt, amend, and repeal bylaws for the administration of the district's affairs.**
- (3) Fix, alter, charge, and collect reasonable rates and other charges, to be imposed by the governing body, in the area served by the district with respect to every person whose premises are, whether directly or indirectly, served by the district, for the following purposes:**
 - (A) To fulfill the terms of contracts made by the district.**
 - (B) To pay the other expenses of the district.**
- (4) Refuse the services of the district if the rates and other charges are not paid by the user.**
- (5) Control and supervise all licenses, money, contracts, accounts, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.**
- (6) Make provision for, contract for, or sell the district's byproducts or waste.**
- (7) Adopt and enforce rules:**
 - (A) to establish procedures for the governing body's actions; or**
 - (B) for any other lawful subject necessary to the operation of the district and the exercise of the power granted.**

Sec. 3. A district may make contracts or incur obligations only if the contracts or obligations are payable solely from:

- (1) revenue the district is permitted to raise under this article;**
- or**



(2) federal, state, or other grants or contributions.

Sec. 4. (a) Except as provided in subsection (b), a district may not make expenditures or take any other action for the benefit of a property served by a system if there is an available sanitary sewer within three hundred (300) feet of the property line.

(b) A district may make expenditures or take other action for the benefit of a property referred to in subsection (a) if the sanitary system operator refuses connection.

Chapter 6. District Plan

Sec. 1. A district plan for the operation of the district must include:

- (1)** a detailed statement of the activities under IC 13-26.5-2-1 that the district plans to undertake; and
- (2)** a timetable for the activities under subdivision (1).

Chapter 7. Payment of District Expenses

Sec. 1. Each district must keep proper records showing the district's finances.

Sec. 2. A local, state, or federal agency or person may advance or give a district money to be used by the district for the following purposes:

- (1)** The preparation of a plan for the operation of the district.
- (2)** Other purposes of the district until the district is in receipt of revenue from its operations or from the county in which the district is located.

Sec. 3. When a district receives revenue from its operations or from the county in which the district is located, the district shall repay any money advanced to the advancing agency in the manner agreed.

Sec. 4. The governing body of a district may provide for the use of revenue of the county for operation of the district.

Chapter 8. Territorial Authority of Sewage Disposal Companies

Sec. 1. This article does not limit the following:

- (1)** The formation and operation under IC 8-1-2-89 of a sewage disposal company to provide sewage disposal service to an area within a district.
- (2)** The granting of a certificate of territorial authority under IC 8-1-2-89 encompassing a part of the area within the district.

Chapter 9. Rates and Charges

Sec. 1. (a) Except as provided in subsection (b), the governing body may determine and impose rates and charges of the district based on the following:

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- (1) A flat charge for each system.
- (2) Variable charges based on the capacity of a system.
- (3) Other factors that the governing body determines are necessary to establish just and equitable rates and charges.

(b) In:

- (1) a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and
- (2) a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000);

rates and charges may be imposed or changed under this chapter only after approval by the county legislative body.

Sec. 2. Unless the governing body finds and directs otherwise, the district is considered to benefit every:

- (1) lot;
- (2) parcel of land; or
- (3) building;

served by a system. The rates or charges shall be billed and collected accordingly.

Sec. 3. (a) Just and equitable rates and charges are those that produce sufficient revenue to pay all expenses incidental to the operation of the district.

(b) Rates and charges too low to meet the financial requirements described in subsection (a) are unlawful.

Sec. 4. The governing body shall establish the rates and charges after a public hearing at which all:

- (1) the owners of systems; and
- (2) others interested;

have an opportunity to be heard concerning the proposed rates and charges.

Sec. 5. After introduction of the ordinance initially fixing rates and charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates and charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in the county. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary.

Sec. 6. (a) The ordinance establishing the initial rates and charges, either as:

- (1) originally introduced; or



(2) modified and amended;
shall be passed and put into effect after the hearing. However, the governing body must approve any modification or amendment of the rates and charges.

(b) A copy of the schedule of the rates and charges established must be:

- (1) kept on file in the office of the district; and
- (2) open to public inspection.

Sec. 7. A change of the rates and charges may be made in the same manner as the rates and charges were originally established.

Chapter 10. Liens for Rates and Charges

Sec. 1. The rates and charges made, assessed, or established under this article against:

- (1) a lot;
- (2) a parcel of land; or
- (3) a building;

that is served by the district are a lien against the lot, parcel of land, or building.

Sec. 2. Except as provided in section 5 of this chapter, a lien attaches on the date the rates and charges become sixty (60) days delinquent. The lien:

- (1) is superior to and takes precedence over all other liens except a lien for taxes; and
- (2) shall be enforced under this article.

Sec. 3. If rates and charges are not paid within the time fixed by the governing body, the rates and charges become delinquent, and a penalty of ten percent (10%) of the amount of the rates and charges attaches to the rates and charges. The governing body may recover:

- (1) the amount due;
- (2) the penalty; and
- (3) reasonable attorney's fees;

in a civil action in the name of the district.

Sec. 4. The rates and charges, together with the penalty, are collectible in the manner provided by this article.

Sec. 5. (a) A rate or charge is not enforceable as a lien against a subsequent owner of property unless the lien for the rate or charge was recorded with the county recorder before the conveyance to the subsequent owner.

(b) If the property is conveyed before the lien can be filed, the officer of the district who is charged with the collection of the rate or charge shall notify the person who owned the property at the

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time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

Sec. 6. (a) The district shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and**
- (2) delinquent fees incurred by the seller;**

upon receipt of a verified demand in writing from the purchaser.

(b) The demand must state the following:

- (1) That the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner.**
- (2) That the purchaser has not been paid by the seller for the delinquent fees.**

Chapter 11. Enforcement of Delinquencies

Sec. 1. This chapter applies only to fees or penalties that have been due and unpaid for at least ninety (90) days.

Sec. 2. A district may enforce delinquent fees and penalties in the manner described in IC 13-26-13.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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